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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Seventh periodic report of States parties due in 1995

Addendum

NAMIBIA*

[2 November 1995]

I. GENERAL

1. Namibia, which was Africa's last colony, regained her independence on 21 March 1990 through a long and bitter liberation war, after 105 years of German and later South African colonial rule. It is situated roughly between 17° and 29° south and 12° and 21° east, and has an area of 824,295 sq. km. Namibia is bounded on the north by Angola, on the north-east by Zambia, on the east by Botswana and South Africa and on the south by South Africa. The country borders the Atlantic Ocean to the west,

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* This document contains the 4th, 5th, 6th and 7th periodic reports due on 11 December 1989, 1991, 1993 and 1995 respectively. Namibia's third report contained in document CERD/C/153/Add.1, is pending consideration by the Committee.

The annexes to the present report are available for consultation in the files of the secretariat.

with approximately 1,300 km of coastline. Extending further east from the north-east is the 35-km-wide Caprivi Region which separates Angola from Botswana and runs for about 450 km into the Zambezi River. Topographically, Namibia may be divided into three natural regions, namely, the Namib Desert in the west, the central plateau, and the Kalahari Desert basin in the east. According to the 1991 census the population of Namibia was 1,409,920, comprising 723,593 females and 686,327 males.

2. Namibia is a unitary secular State. It is divided into 13 administrative regions. Each region has an elected Regional Council with a Regional Governor as the regional chief executive. It has an executive presidency system with the President as both the head of State and head of Government. But executive power is vested in the President and the Cabinet of Ministers. In this way, the presidential system partakes of aspects of both the American presidential system and the British cabinet system. The Cabinet consists of the President, the Prime Minister (who is the head of government administration) and ministers. At present there are 18 ministers. The large ministries have deputy ministers, e.g. the Ministry of Justice. All ministers must be members of the National Assembly in which legislative power is vested. It has the power to pass laws with the assent of the President and subject, where applicable in terms of the Constitution, to review by the National Council whose membership of 26 consists of 2 members elected by each of the 13 Regional Councils. The National Assembly on the other hand has 72 members elected through the party list method of the proportional representation system and up to 6 non-voting members appointed by the President. Municipal, town and village councils constitute local government. All members of the councils are elected by secret ballot on the basis of the fist-past-the-post electoral method.

3. The Judicial power of the country is vested in the courts which consist of the Supreme Court, the High Court and lower courts. The independence and impartiality of the judiciary are guaranteed by the Constitution. The High Court has unlimited jurisdiction and therefore it is better placed to protect human rights. The Supreme Court has only appeal jurisdiction except when it is called upon by the Attorney-General to determine the constitutionality of an act or law. Namibia has a justiciable Bill of Rights which is incorporated in the Constitution. Any person who alleges human rights violation, including racial discrimination, may seek redress in the courts, particularly the High Court. Apart from this judicial protection, there is the Ombudsman who is also empowered by the Constitution to protect human rights. There is also a State-sponsored legal aid scheme which offers legal assistance and representation to indigent persons who may wish to seek redress in the courts for abridgement of their human rights. Finally, there is a vibrant legal profession which is also free and independent.

II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

4. The people of Namibia through their elected framers of the Constitution decided never to return to their colonial past of racial discrimination as epitomized by the obnoxious and reprehensible doctrine of apartheid and the white people's utter disrespect towards the indigenous black people. After Namibia's independence the Government came up with the policy of national

reconciliation so that all Namibians may join hands in developing the country in peace and unity, without looking back into the past iniquities of apartheid. Akin to this policy is the policy that outlaws racial discrimination in all its forms.

5. About 5 per cent of Namibia's population is white, comprising English-, German-, and Afrikaans-speaking persons. About 7 per cent of the population are people of mixed race (coloureds). The remainder of the population are black people, consisting of seven major linguistic groups, i.e. the Bushman, Caprivi, Herero, Nama/Damara, Ovambo and Tswana language groups. The law before independence assigned about 33 million hectares of the land to so-called black homelands and about 35 million hectares to white commercial farmers. Thus German and later South African colonial laws made sure that most of the productive land remained in the hands of whites to the exclusion of the indigenous black population.

6. As a World Bank report observed, there are at least two Namibias. The white population, which is no more than 5 per cent of the total, is mostly urban and enjoys the incomes and amenities of a modern Western European country. The black population, mostly rural, lives in abject poverty. It was reported also that what the white population earns in a day of work, the urban black population earns in two weeks and the rural black population in one year. While the white population does have access to excellent health care and good education, the black population does not. The wealthiest 5 per cent, almost all of whom are whites, receive more than 70 per cent of the country's GDP, while the poorest 55 per cent receive only 3 per cent.

Article 2

7. In order to demonstrate the Namibian people's revulsion at the past colonial policy and practice of racial discrimination, the framers of the Constitution made it possible to criminalize racial discrimination by constitutional provisions. Pursuant to these provisions, the Racial Discrimination Prohibition Amendment Act was promulgated in December 1991. The main object of this statute is to render criminally punishable certain acts and practices of racial discrimination and apartheid in relation to, inter alia, public amenities, the provision of goods and services, immovable property, educational and medical institutions, employment, associations, religious services, and involving the incitement of racial disharmony and victimization.

8. The Government has taken legislative measures in terms of the 1991 Act to prohibit any person or central government or local government institution or private institution from denying any other person access to or the use of any public amenity or any facility in a public amenity solely because such other person is a member of a particular racial group. Neither should any person, private institution or local or central government institution apply any practice with respect to a public amenity a practice or policy whereby any facility or service available at such a public amenity is provided to members of the public on a segregated basis according to colour, race, nationality or ethnic origin.

9. The Government has taken legislative measures in terms of the 1991 Act to amend certain colonial laws which sought to perpetuate racial discrimination whereby black persons were not permitted to live or own real property in urban areas. In addition, the law prohibits any person engaged in a business, trade or profession for the provision of goods or services to the public to refuse or fail on demand to provide such goods and services to any person because such other person is a member of a particular racial group.

10. In terms of the law no association, whether by a provision in its constitution or in accordance with a policy or practice, deny any person admission to membership of the association because such other person is a member of a particular racial group. Indeed, at present there is no association whose membership is based solely on race, colour or ethnic origin. Thus, the membership of trade unions, the law society, farmers' associations, chambers of commerce, women's organizations, student unions, the accountants' institute and other professional bodies and political parties exhibit a multiracial character.

11. As alluded to earlier, Namibia inherited a considerable body of legislation which blatantly discriminates against blacks. Most of this legislation has been repealed some of it even before independence in 1990, but not all racially discriminatory legislation has been repealed or amended to date. An example of existing racially discriminatory legislation is the treatment of persons who were previously classified as blacks under the laws regulating the administration and succession of deceased persons' estates. Different systems apply to persons classified as whites and coloured on the one hand and to persons classified as black on the other. The law applicable to the administration of the estates of deceased whites and coloureds is the Administration of Estates Act, Act No. 66 of 1965. The law applicable to intestate succession (i.e. if a person dies without leaving a valid will) to the estates of whites and coloureds is the Intestate Succession Ordinance, Ordinance No. 12 of 1946. The law applicable to blacks in both cases is the Native Administration Proclamation, Proclamation No. 15 of 1928.

12. The system applicable to whites and coloureds is clear and easy to understand. There are detailed provisions regulating the succession and administration of these estates. The estates are administered under the supervision of a specialist office, that of the Master of the High Court. The law regulating the estates of blacks who die without leaving a will (the vast majority of cases) is a mass of confusion. There is no proper system of administration, nor is the administration properly supervised. It is difficult to establish who the heirs are and this uncertainty is exploited by unscrupulous persons who enrich themselves at the expense of the deceased's immediate family, particularly women and children.

13. The Master of the High Court is studying the situation with the view to standardizing this apparently discriminatory legislation and practice. But this study will take a considerable length of time since the practice is embedded in customary law of which there are many.

14. A further example of discriminatory legislation is section 17 (6) of the Native Administration Proclamation. This section, which only applies to a part of Namibia, thus causing further confusion, provides that a marriage

between blacks shall be outside of community of property. The usual marital regime is in community of property. There is definitely no justification for the maintenance of two separate systems, based on skin colour and, in addition, a black person's place of marriage. This is yet another area which will engage the urgent attention of the Law Reform and Development Commission.

15. A policy of affirmative action has been given practical effect in such areas as education and employment. In terms of article 23 (2) of the Namibian Constitution, Parliament may enact legislation providing directly or indirectly for the advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances arising out of past discriminatory laws or practices. Although no such formal legislative instrument has to date been made, the policy is being implemented in deserving cases. Affirmative action legislation will be passed in the course of this year (1995)

Article 3

16. Namibia's condemnation and prohibition of the policies and practices of racial discrimination and apartheid are contained in article 23 (1) of the Namibian Constitution, which provides as follows:

> "The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices."

17. Because of the close historical ties between Namibia and South Africa, independent Namibia had no choice but to continue the economic and trade ties with apartheid South Africa. Diplomatic relations were also maintained at non-ambassadorial level. Each country maintained a liaison office in each other's country. Since the abolition of apartheid in South Africa, diplomatic relations between Namibia and South Africa have been elevated to ambassadorial level and economic and trade ties are being renegotiated with the new regime in line with the new socio-political dispensation in South Africa.

Article 4

18. In terms of the law, it is not permissible for a person to publish or display, or cause or permit to be published or displayed, any advertisement or notice that indicates an intention to perform any act which constitutes racial discrimination.

19. Under the law, every person is prohibited from publicly using any language or publishing or distributing any written matter or displaying any article (e.g. a flag, insignia or emblem) or doing anything with intent to threaten, ridicule or insult any person or group of persons on the ground that the person belongs or persons belong to a particular racial group, or cause,

encourage or incite disharmony or feelings of hostility, hatred or ill-will between different racial groups or persons belonging to different racial groups or disseminate ideas based on racial superiority.

20. The law forbids any person from establishing, supporting or being a member of or participating in activities of an organization or movement of which the aim is to engage in acts of violence against members of any particular racial group or engage in activities aimed at causing or promoting any such acts.

21. A person who does any of the things which are prohibited under paragraphs 18 and 19 commits an offence and is liable to a fine not exceeding N$ 80,000 or imprisonment for a period not exceeding 15 years or to both.

Article 5

22. In the preambular provisions of the Namibian Constitution, the basic human rights and fundamental freedoms contained in the Bill of Rights of the Constitution are guaranteed to persons regardless of race, colour, ethnic origin, sex, religion, creed or social or economic status. The rights and freedoms include: (a) the right to a fair trial by courts and tribunals; (b) the right to personal liberty and security of person; (c) freedom from torture or cruel, inhuman or degrading treatment or punishment; (d) the right to participate in political activities, including voting and being voted for in elections to all elective offices; (e) other civil rights, some of which are adumbrated under article 5 (d) (i) to (ix) of the Convention; and (f) economic, and social cultural rights, some of which are listed under article 5 (e) (i) to (vi) of the Convention.

Article 6

23. There are adequate and effective constitutional provisions which enable individuals to obtain remedies for any violation of their human rights and there are laws to ensure that those remedies are enforced, even against the State. People can seek redress in the courts whose independence is protected by the Constitution. Indigent persons have the State-sponsored legal aid scheme and a private legal aid scheme to fall back on for legal assistance and representation. There is a pro-active and an efficient institution of Ombudsman before which aggrieved persons may seek redress in a cheaper and quicker way, free from the stereotypes and complexities of judicial proceedings.

24. Every person has a right to a fair trial guaranteed to him or her by the Constitution regardless of his or her race, colour, ethnic origin, sex, religion, creed or social or economic status.

25. Whenever a court convicts any person of an offence of racial discrimination in terms of the 1991 anti-racial discrimination statute, the court may, upon the application of the complainant, if he or she has suffered damage as a result of an act in respect of which that person was convicted, award the complainant compensation for the damage he or she has suffered.

26. The Government's policy of national reconciliation has been fully accepted by all Namibians to such an extent that for the five years that Namibia has been independent only one case relating to racial discrimination has come up to the courts under the 1991 anti-racial discrimination Act whose provisions are in tune with the Convention. The case arose out of statements allegedly made and which were directed against white police officers who had beaten black persons engaged in a peaceful demonstration. Charges were brought against the then Director of the Namibian Broadcasting Corporation, a journalist employed by the NBC, and a Mr. Hans Goagoseb, who had made the statements. The prosecution which was brought under the 1991 Act was withdrawn during September 1995. It is interesting to note that the only prosecution ever brought under the Act was brought in protection of a sector of society (i.e. white police officers) that was responsible for the gross violation of the human rights of black Namibians during the colonial period. It cannot be controverted that a critical examination of any sector of society is necessary in a democratic society. This criticism will sometimes be expressed in racial terms, because of the legacy of racial classification and racial discrimination. It is hoped that the Act will not, however, be used to stifle such criticism, unless it amounts to crude racist speech or racial incitement. The provisions of the section 11 (1) (b) under which these persons were charged are indeed broader than article 4 of the Convention. It will therefore be necessary to amend the section so as to bring it in line with the provisions of the Convention.

27. The only fly in the ointment is that in terms of section 18 of the Act:

> "No trial for an offence under this Act shall be instituted without the written authority given personally by the Prosecutor-General in each case."

All criminal prosecutions are instituted under the Criminal Procedure Act (Act No. 51 of 1977) under the control and direction of the Prosecutor-General. His or her appointment and powers and functions are provided under article 88 of the Namibia Constitution:

> "(1) There shall be a Prosecutor-General appointed by the President on the recommendation of the Judicial Service Commission. No person shall be eligible for appointment as Prosecutor-General unless such person:
>
> "(a) possesses legal qualifications that would entitle him or her to practise in all the Courts of Namibia;
>
> "(b) is, by virtue of his or her experience, conscientiousness and integrity a fit and proper person to be entrusted with the responsibilities of the office of Prosecutor-General;
>
> "(2) The powers and functions of the Prosecutor-General shall be:
>
> "(a) to prosecute, subject to the provisions of this Constitution, in the name of the Republic of Namibia in criminal proceedings;

"(b) to prosecute and defend appeals in criminal proceedings in the High Court and the Supreme Court;

"(c) to perform all functions relating to the exercise of such powers;

"(d) to delegate to other officials, subject to his or her control and direction authority to conduct criminal proceedings in any Court;

"(e) to perform all such other functions as may be assigned to him or her in terms of any other law."

28. Section 18 places a severe and unusual obstacle in the way of a person wishing to institute criminal proceedings under the Act. Therefore, it would appear that Namibia has not complied fully with this article, which requires a State party to ensure an effective remedy to persons who have been discriminated against.

29. Unfortunately, it is still the position that black persons are discriminated against in many subtle ways. The worst cases often take place in small rural towns involving the poorest and most vulnerable sector of Namibian society, i.e. blacks. If section 18 were deleted from the Racial Discrimination Prohibition Amendment Act, the Act would become an effective remedy for all persons who have been discriminated against. The Ministry will work towards the repeal of the Act by deleting this offensive and overbroad provision. It is probably because of this limitation that only one prosecution has been instituted under the Act since it came into force in December 1991.

30. It is interesting to note that a case of racial discrimination was heard by the courts as from October 1991 under a repealed law, i.e. the Abolition of Racial Discrimination (Urban Land and Public Amenities) Act, 1979. Criminal proceedings that were instituted before the commencement of the successor statute were saved through a transitional and savings provision in that successor statute, i.e. the Racial Discrimination Prohibition Amendment Act, 1991, which was referred to earlier in the present report. The provisions of the 1991 statute are more in line with the Convention, as was intimated earlier, and also the maximum penalty for racial discrimination was enhanced from a paltry N$ 300 to between N$ 50,000 and N$ 80,000. In that case, some blacks, including a deputy minister, were refused meals in a restaurant. The complainants alleged racial discrimination as the basis for the refusal and so the accused (the restaurant owner and an attendant) were charged under a provision of the 1979 Act which prohibits a person who, in respect of any public amenity, applies any practice or policy whereby any facility or service available at such public amenity is provided to members of the public on a segregated basis according to colour, race, nationality or ethnic or national origin. Each of the accused was found guilty in a magistrate court and sentenced to the maximum fine of N$ 300. Their appeal to the High Court was dismissed.

Article 7

Education and teaching

31. First, Namibia has been combating racial discrimination through civic education as a cross-curricular subject. One of the major concerns of education reform in independent Namibia was the overcoming of the disparities of colonialism and apartheid which Namibia inherited with its independence in 1990. This demanded, above all, a kind of education which would terminate any "divide and rule" philosophy and politics. Instead, a better understanding of one another and tolerance towards racial and ethnic groups within Namibia were required and had to be developed by means of information and practical experiences. Although deliberations on how to incorporate this understanding in the formal school curriculum focused naturally on issues of the newly politically united nation, the international perspective of friendship between people and nations was never lost from sight.

32. An early initiative of the Ministry of Education and Culture to identify problem areas of racial discrimination was the establishment of a cross-ministerial national Committee for Civic Education which included, besides governmental institutions, private organizations and institutions of the Namibian civil society. To date, this committee has organized two major conferences on civic education in the Namibian context and drafted the blueprint for a framework for civic education in Namibia.

33. The blueprint deals, in a special section, with human rights issues. The Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination are main references. Although the work on the framework has not been finished yet, the information and ideas deriving from this initiative have been spread and have been incorporated in a number of school curricula.

34. Second, Namibia has been combating racial discrimination through the social studies curriculum (grades 4-7). As the initiative to address human rights issues in a broader way started from the Social Science and Humanities Subdivision in the Ministry of Education and Culture, the social studies curriculum naturally reflects this approach.

35. The curriculum addresses civic values; rights and responsibilities; causes of change and development that influence a peaceful and harmonious life in the family, community, country and the world. It fosters the development of attitudes such as a commitment to the human values of justice, equality, diversity and human rights, and the development of competencies in making responsible judgements in terms of justice, equality and other democratic values. Accordingly, a number of basic competencies in the grade 4 syllabus address, directly or indirectly, issues of better understanding each other, tolerance and friendship. The syllabuses for grades 5 to 7 are presently under discussion.

Culture

36. Article 19 of the Namibian Constitution provides that "Every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected in this Article do not impinge upon the rights of others or the national interest."

37. Namibia has a rich and diverse cultural heritage, in terms of African and European traditions, and also physically, for instance in the form of rock art. However, in the past our cultural differences were accentuated through racism, exclusive ethnic allegiances and the colonial strategy of "divide and rule". In contrast, there is now a need for Namibians to develop mutual understanding and tolerance, as equals, as we build a new and united nation.

38. One of our first concerns has therefore been to record and understand the cultures which we have inherited. The National Archives and the State Museum have been engaged in research and education concerning Namibian cultures, and the struggle against racism in Namibia. There have been displays at the Museum about Namibia's liberation a struggle, and the role played in this by the United Nations, the solidarity movement, and our own leaders. Traditional knowledge and customs are also being gathered in regard to the natural environment. Two major exhibitions of Namibian and other rock art are in preparation, to show not a characteristic of a particular ethnic group but an invaluable contribution to the world of art.

39. Various cultural festivals have been organized in the regions and have attracted great public interest. Traditional crafts are being fostered, not just because of the culture which they convey, but also as a means of livelihood. A new view of culture is being introduced into the school curriculum, and this is being supplemented through extracurricular culture clubs.

40. Namibia is fortunate to have signed a number of international cultural agreements since independence. This has led to several stimulating exchanges of artists with countries of Africa, Asia, the Americas and Europe. There has been closer collaboration within the Southern African Development Community.

41. The College of the Arts, Namibia's main institution for arts education and training, is now engaged in a process of change to offer its services to a wider community, to be more engaged with African art forms, and to carry out research into Namibian music and dance.

42. Various cultural groups from all races have also been supported through grants, including the National Theatre of Namibia, the National Arts Gallery, the National Monuments Council, and a variety of smaller groups.

Information

43. The State-owned Namibia Broadcasting Corporation (NBC) - TV and radio - would usually publicize any instance of racial discrimination in order

to drive home the nation's and Government's revulsion towards any practice or conduct or behaviour which tends to foment racial hatred in the country. The radio conducts "chat shows" in the major languages of the country including English, the official language, where members of the public are encouraged to raise any issues they wish discussed and also to ask questions which representatives of government ministries and private institutions must answer on "Feedback" programmes. If any conduct or behaviour or utterance is perceived as capable of creating racial hatred or disharmony or considered as racialist, the maker of the statement or the person whose action is so perceived or a representative of his or her institution or organization - no matter if it is a Government or private institution - will have to answer questions raised on the "Feedback" programmes.

44. The TV also usually holds discussion programmes during which representatives from Government, opposition parties, academicians and representatives of non-governmental organizations are invited to discuss and find ways and means of strengthening the Government's policy on national reconciliation whose cardinal objective, as intimated earlier, is to combat racial discrimination despite the brutal and degrading oppression of non-white people by whites during the colonial era. Indeed, the policy of national reconciliation forms a part of the fifth preambular paragraph of the Namibian Constitution.

45. The press, radio and television assist in the dissemination of information on human rights and various human rights instruments by publicizing the various human rights seminars and workshops conducted by the Ministry of Justice, the Council of Churches of Namibia (CCN) and non-governmental organizations interested in the promotion and protection of human rights and the combating of racial discrimination.

Conclusion

46. The point has been belaboured in this report that racial discrimination is not a problem of national life of Namibia due mainly to the forgiving and accommodating character of the non-white population of the country which constitutes about 95 per cent of the total population. It is also because the Government has ensured the workability and success of the policy of national reconciliation. In addition, there is a justiciable Bill of Rights, which is chapter III of the Namibian Constitution, which seeks to guarantee every inhabitant's basic human rights and fundamental freedom without discrimination.

47. In sum, in Namibia, the 1991 anti-racial discrimination Act and the reinforcing Bill of Rights have succeeded in combating racial discrimination and in preventing any acts or conduct or behaviour that might tend to create racial discrimination to such an extent that no marked instances of racial discrimination or disharmony can so far be cited. The severe punishment under the Act is also real deterrent.

Consultation

48. The present report was compiled by the Ministry of Justice from inputs submitted by that Ministry and other relevant ministries and government agencies.

49. Comments on the draft were invited from the Legal Assistance Centre, a non-governmental organization which is involved in the provision of free legal assistance and representation and also in the promotion and protection of human rights. The Centre's comments have substantially been incorporated in this report.